IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 166 of 2007
In
OFFICIAL LIQUDATOR REPORT No. 166 of 2006
In
COMPANY PETITION No. 66 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

==========

MAK BUSINESS ENTERPRISE PRIVATE LTD - Applicant(s)
Versus
OL OF AMBICA MILLS LTD. - Respondent(s)

==========

Appearance :
MR PAVAN S GODIAWALA for Applicant(s) : 1,
OFFICIAL LIQUIDATOR for Respondent(s) : 1,
MR JS YADAV for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 09/05/2007

ORAL JUDGMENT

1. Present Judges' Summons has been taken out

by the applicant Mak Business Enterprise Private Limited, for an appropriate order directing the Official Liquidator to accept residual / remaining amount of sale consideration of Rs.5,11,25,000/- (Rupees Five Crore Eleven Lacs Twenty Five Thousand only) from the applicant Company incorporated under part IX of the Companies Act, 1956 converted from the partnership firm Mak Business Enterprise in whose favour sale is confirmed of the property / asset of Ambica Mills Limited in liquidation i.e. Lot No. 1 being office situated at 122, Maker Chambers VI, Nariman Point, Mumbai and consider the applicant as the purchaser while executing sale deed / conveyance deed in favour of the applicant.

2. That the property / asset of Ambica Mills Limited in Liquidation viz Lot No. 1 being office situated at 122, Maker Chambers VI, Nariman Point, Mumbai was put to auction and the sale came to be confirmed in favour of one Mak Enterprise a partnership firm for sale consideration of Rs.7,35,00,000/- (Rupees Seven Crore Thirty Five Lacs) *vide* order dated 28.12.2006 passed by this Court in Official Liquidator Report No. 166 of 2006 in Company Petition No. 66 of 1988. It is the case on

behalf of the applicant that the firm has deposited by way of Earnest Money amount of Rs.40,00,000/- (Rupees Forty lacs) and Rs.5,00,000/- (Rupees Five lacs) by way of late fee charges. It is further submitted in the application that within the stipulated time, 25% of the amount has been deposited i.e. Rs.1,83,75,000/- (Rupees One Crore Eighty Three Lacs Seventy Five Thousand) with the Official Liquidator as per the terms and conditions of the tender form and as per the order dated 28.12.2006 passed by this Court in aforesaid Official Liquidator Report No. 166 of 2006. It is submitted that aforesaid amount has been deposited on 22.01.2007. It is submitted in the affidavit in support of the Judges Summons that after the order dated 28.12.2006 passed by this Court in Official Liquidator Report No. 166 of 2006 confirming the sale in favour of the Mak Enterprises a partnership firm, upon induction of new partners fresh deed was made on 17.02.2007. It is further submitted that the aforesaid partnership has been got converted into part IX Company and hence, present application is preferred before this Court for necessary direction to the Official Liquidator as stated hereinabove.

3. Shri Pavan Godiawala, learned Advocate appearing on behalf of the applicant has submitted that all the partners of the partnership firm - Mak Enterprise are the promoters of the applicant – Company and to incorporate the firm into part IX Company other partners were inducted and therefore, fresh deed was executed. It is submitted that at least seven partners were required and thereafter, partnership firm was converted into part IX Company. It is submitted that when the partnership firm in whose favour the sale was confirmed is converted into part IX Company there is no change and therefore, the condition imposed and/or provided while confirming the sale in favour of M/s. Mak Enterprise to the effect that no nomination is permitted will not come in any way of the applicant and, therefore, it is requested to grant the reliefs as prayed for as preferred directing the Official Liquidator to accept the residual / remaining amount of Rs. 5,11,25,000/- from the applicant as if the sale is confirmed in favour of the applicant, that the applicant be treated as purchaser and to direct the Official Liquidator to execute sale deed / conveyance deed in favour of the applicant.

4. This application was heard by this Court on 30.04.2007 and considering the submission on behalf of the applicant that all those partners of Mak Enterprises a partnership firm are promoters of the applicant Company and an impression was given that all those partners of the partnership firm who were there at the time of confirming of the sale are the promoters of the applicant Company and the very partnership firm with the same partners are the promoters of the applicant Company and the said partnership firm with same partners is converted into part IX Company and relying upon the said statement and the submission, this Court pronounced the order allowing the application on 30.04.2007 and detailed order was to be passed subsequently. However, at the time of dictation of the order dated 30.04.2007, on going through the supporting documents and the annexures annexed with the application along with the affidavit in support of the Judges Summons, this Court found that the partnership firm along with same partners who were there at the time of confirming the sale is not the same partnership firm which is converted into part IX Company. However, subsequently, after the order of confirming the sale new partners have been inducted and new fresh deed

has been executed upon induction of new partners on 17.02.2007. The said new partnership firm along with other partners have formed a Company and the said partnership firm has been converted into part IX Company and therefore, it cannot be said that the very partnership firm with same partners who were there at the time of confirmation of sale is converted into part IX Company and there is change in the constitution and there will be new entity. Therefore, this Court *vide* order dated 30.04.2007 directed the Office to place this application for further hearing as this Court was of the *prima facie* opinion that the learned Counsel appearing on behalf of the applicant has tried to mislead the Court. Thereafter, the matter has been heard on 09.05.2007 and Mr. Godiawala, learned Counsel appearing on behalf of the applicant is heard at length.

5. It is required to be noted that the sale has been confirmed with regard to the aforesaid property in favour of Mak Enterprises a partnership firm *vide* order dated 28.12.2006 passed by this Court in Official Liquidator Report No. 166 of 2006 on the terms and conditions as stipulated in the said order. One of the condition of the said order more

particularly condition No.3 (E) is that no nomination will be permitted. It is required to be noted that at the relevant time when the sale was confirmed in favour of Mak Enterprise it was a partnership firm consisting of only two partners i.e. one Mr.Khalid Shoukatali Choudhary and another Asif Ismail Potia both having 50% share each. Thus, at the time when the sale was confirmed in favour of Mak Enterprises partnership firm, the said partnership firm was having only two partners. That thereafter, other five partners have been inducted and fresh partnership deed has been made on 17.02.2007 and all the partners of the fresh partnership firm deed dated 17.02.2007 promoted the applicant Company i.e. Mak Enterprise and the said partnership firm – Mak Enterprise with the partners as per the partnership firm deed dated 17.02.2007 is converted into part IX Company. Thus, after the confirmation of the sale new partners have been inducted and the said partnership firm with new partners is converted into part IX Company, therefore, there will be new entity with new partners and in view of the specific condition imposed by this Court while confirming the sale in favour of Mak Enterprise that no nomination will be permitted, the prayer of the applicant to direct the Official

Liquidator to accept the balance amount of sale confirmation from the applicant, to treat the applicant as purchaser and consequently to direct Official Liquidator to execute sale deed / conveyance deed in favour of the applicant, cannot be granted. This Court imposed aforesaid condition to the effect that no nomination shall be permitted and the sale is confirmed only in favour of Mak Enterprises a partnership firm and the sale deed / conveyance deed to be executed only in favour of Mak Enterprises on full payment of sale consideration with a object and purpose to see that there is no loss of stamp duty to the State Government. This Court was of the firm opinion that if the sale is confirmed in favour of “A” party and nomination is permitted and after the payment is made by “A” if nomination is permitted in that case sale deed / conveyance deed will be executed in favour of “B” party and therefore, there will be transfer by “A” to “B” and the same would be without payment of stamp duty and/or other registration charges etc. and there will be loss to the State Government and therefore, this Court specifically imposed the condition that no nomination will be permitted and sale is confirmed in favour of Mak Enterprise and the said condition has been

accepted by M/s. Mak Enterprises the purchaser.

6. Under the circumstances, when specific condition is imposed while confirming the sale that no nomination shall be permitted and subsequently it is found that after confirmation of the sale new partners are inducted in the partnership firm and thereafter the said new partnership firm with new partners is converted into part IX Company, there will be change in the Constitution with new partners, therefore, it will be an attempt to get out of the condition that no nomination is permitted and therefore, the prayer of the applicant to direct the Official Liquidator to accept balance amount of sale consideration from the applicant, to treat the applicant as purchaser and to execute sale deed / conveyance deed, cannot be granted. As stated above, this Court felt that the learned Counsel appearing on behalf of the applicant has tried to mislead the Court by making the submission at the time of hearing that all those partners in the partnership firm who were there at the time of confirmation of sale are partners of the applicant Company and the very partnership firm with same partners are the promoters which is subsequently converted into part IX Company

and the learned Counsel appearing on behalf of the applicant did not submit that after the confirmation of the sale in favour of Mak Enterprise *vide* order dated 28.12.2006 new partners were inducted and the Constitution is changed and the partnership firm as per the fresh deed dated 17.02.2007 is converted into part IX Company. Thus looking to the conduct on the part of the applicant's advocate by not making correct submission, the applicant is not entitled to reliefs as prayed for. It is required to be noted that subsequently when the application is heard on 09.05.2007, the learned Counsel appearing on behalf of the applicant has submitted that in the affidavit in support of the Judges' Summons in para (3) there is specific mention with regard to induction of new partners and fresh deed dated 17.02.2007. However, it is required to be noted that the Court relies upon the statement of the learned Counsel and the oral submissions and until and unless opportunity is given to the contrary, the Court accepts the statement of the Counsel and as stated above oral statement was made which is referred to hereinabove which according to this Court was misleading and not reflecting the correct position which compelled the Court to place the application for further hearing / rehearing.

Therefore, as stated above the applicant is not entitled to any reliefs as prayed for. Even otherwise on merits also the applicant is not entitled to any reliefs.

7. For the reasons stated above, the application fails and is accordingly dismissed. However, there shall be no order as to costs.

[M.R.Shah, .]

satish